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State v. Olsen Appellant's Reply Brief Dckt. 41569

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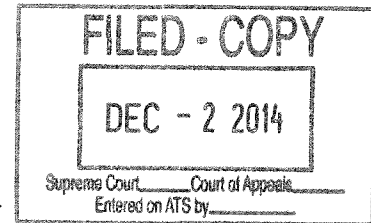
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COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 41569
Plaintiff-Respondent,)	
v.)	CANYON COUNTY NO.
)	CR 2005-36734
CHESTER LEE OLSEN, aka)	
CHET OLSEN, PHILLIP)	REPLY BRIEF
OLSEN, NEIL OLSEN, JUSTIN)	
OLSEN, PHILLIP OLSEN NEIL,)	
DARRELL DUANE DYER,)	
DARRELL DYER, TOM SMITH,)	
BILLY ROY NELSON)	
)	
Defendant-Appellant.)	



REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF CANYON

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STATEMENT OF THE CASE

Nature of the Case

Chester Olsen appeals, contending that the district court erred when it refused to grant him credit for time served. He also asserts that the district court's factual finding – that none of the time for which Mr. Olsen claimed credit was attributable to this case – is clearly erroneous. The State replies, primarily contending that, because the notice of appeal is timely only from the order denying Mr. Olsen's motion to reconsider its order denying his motion for credit, and because the motion for reconsideration was not filed within fourteen days of the order denying his initial motion for credit, this Court lacks jurisdiction to consider this issue on appeal.

The State's argument is mistaken. As the district court ruled on the merits of Mr. Olsen's claim for credit in its order denying the motion to reconsider, that decision is may be properly challenged in this appeal. Additionally, because the district court is duty-bound to award credit for the time that a defendant was incarcerated on this case, its ultimate conclusion that Mr. Olsen was not entitled to credit may be reviewed on appeal. And, as the clearly erroneous factual finding was part of the decision to deny the motion to reconsider, it, too, may be properly challenged in this appeal. Therefore, this case should be remanded for clarification on relevant points of fact and, upon clarification of the record, a proper award of the credit to which Mr. Olsen is entitled should be made.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Olsen's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUE

Whether the district court erred by denying Mr. Olsen's motion for credit for time served.

ARGUMENT

The District Court Erred By Denying Mr. Olsen's Motion For Credit For Time Served

A. This Court Has Jurisdiction To Resolve Mr. Olsen's Challenge To The District Court's Decision To Not Award Him Credit

Mr. Olsen filed a notice of appeal timely from the district court's denial of his motion to reconsider its decision denying his motion for credit. In his motion to reconsider, Mr. Olsen requested that the district court reconsider his request for credit, focusing on a less-broad period of time than he requested in his initial motion for credit. (*Compare* R., p.19 (motion to reconsider requesting credit for the period of incarceration between April 6, 2011, and April 19, 2011, as well as the time from his most recent arrest, which he listed as July 3, 2011); *with* R., p.11 (motion for credit requesting credit for the time between January 31, 2010, and April 19, 2011, as well as the time after his most recent arrest, which he listed as July 2, 2011).)

The State contends that the issue of credit is not properly before this Court because Mr. Olsen's notice of appeal is not timely from the denial of his initial motion for credit and the motion for reconsideration was not filed such that the current notice of appeal relates back to that initial denial. The State also contends that, because the order denying the motion to reconsider does not change the material terms of the order denying credit, this Court is without jurisdiction to consider Mr. Olsen's claims on appeal.

However, the State fails to account for the fact that the district court ruled on the merits of Mr. Olsen's new, limited request for credit when it denied his motion to reconsider: "This Court has reviewed the underlying file and there is nothing in the file

that would indicate the Defendant was arrested on this case on either April 6, 2011[,] or on July 3, 2011[,] or that there was any kind of ‘hold’ placed on the Defendant as a result of this case.” (R., p.25.) Therefore, it concluded that Mr. Olsen was not entitled to credit for either period of time; rather, it determined that he was properly awarded credit starting on July 27, 2012, as that was the date the district court determined the most recent warrant was served. (R., p.25.) On appeal, Mr. Olsen has challenged the district court’s decision to deny his request for credit for the period starting on April 6, 2012. (See *generally* App. Br.) As the district court considered and ruled on the merits of that claim, the district court’s decision is properly challenged on this appeal. See, e.g., *State v. DuVal*, 131 Idaho 550, 553 (1998).

Furthermore, the fact that the district court made this new determination based on Mr. Olsen’s different (though related) claim for credit means that the order denying the motion to reconsider is not simply a reentry of the order denying the motion for credit. Therefore, it is properly challenged now on appeal. Compare *State v. Ciccone*, 150 Idaho 305 (2010). In *Ciccone*, the Supreme Court determined that there was no appellate jurisdiction because the defendant had not timely appealed from the initial judgment of conviction; rather, he had appealed from an amended judgment which was entered to correct a clerical error pursuant to I.C.R. 36. *Id.* at 307-08. The Supreme Court held that, because the district court was simply *reentering* the same decision, the time to appeal that decision did not start anew with the reentered order. *Id.* However, in this case, the district court entered a new order on similar, yet not identical, grounds. It definitely was not *reentering a corrected* order. Compare *id.* Thus, since Mr. Olsen’s notice of appeal is timely from the order denying the motion to reconsider, this Court

has jurisdiction to consider Mr. Olsen's challenges to the new decisions in that order, regardless of whether the motion to reconsider relates back to the initial order denying credit. As such, Mr. Olsen has properly challenged the district court's decision on the merits of his claim for credit for time served on appeal.

B. On The Merits, The District Court's Decision To Deny Mr. Olsen Credit Was Based On A Clearly Erroneous Factual Conclusion

The State does not respond to the merits of Mr. Olsen's argument on appeal – that the district court's factual findings underlying its decision to deny the motion were clearly erroneous. (*See generally* Resp. Br.) Rather, it simply adopts the district court's explanation for why it denied the motion to reconsider as its argument on appeal. (Resp. Br., p.7.) However, as explained in detail in the Appellant's Brief, one of the factual determinations underlying that decision is clearly erroneous. (App. Br., pp.5-6.) Therefore, the State has adopted the same factually-erroneous position as its argument on appeal, and that argument should be rejected as such.

The facts in the record demonstrate the error in the district court's, and thus, the State's, conclusions on the merits of Mr. Olsen's claim for credit. The Cassia County jail records were made part of the record with the initial motion for credit. (R., pp.9-15.) In its order denying the motion to reconsider, the district court indicated that it had reviewed the underlying file. (R., p.25.) Thus, those records were before the district court when it ruled on the motion to reconsider. Those jail records clearly state that Mr. Olsen was booked into the Cassia County jail on April 6, 2011, under the case number for this case (CR 05-36734). (R., p.15) Therefore, the State's contention and the district court's factual conclusion – that “there is nothing in the file that would

indicate the Defendant was arrested on this case on . . . April 6, 2011,” (R., p.25; Resp. Br. p.7) – is affirmatively disproved by the evidence in the record, and, as such, is clearly erroneous.

Since the record indicates that Mr. Olsen was incarcerated on this case, he is entitled for credit for that period of incarceration. As a result, this Court should vacate the order denying the motion for credit for time served and remand this case for clarification of the record. Thereafter, it should award Mr. Olsen any and all credit to which he is properly entitled.

CONCLUSION

Mr. Olsen respectfully requests that this Court vacate the district court’s order denying his motion for credit for time served and remand this case for a proper calculation of credit for time served.

DATED this 2nd day of December, 2014.



BRIAN R. DICKSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 2nd day of December, 2014, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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MOLLY J HUSKEY
DISTRICT COURT JUDGE
E-MAILED BRIEF

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BRD/eas